



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2004

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046

OR2004-4992

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203681.

The City of Garland (the "city") received a request for responses, award information, and pricing information for a particular Request For Proposals. You state that in accordance with a previous determination issued by this office, the city has released a redacted copy of the Lockheed Martin proposal. *See* Open Records Letter No. 2003-8116 (2003) (stating that the city must withhold the marked portions of Sections 2, 3, and 4, and Appendices LM-A through LM-G and LM-J under section 552.110(b) of the Government Code); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). You state that the release of portions of LinkAmerica's proposal may implicate the proprietary interests of that company. Furthermore, the city asks this office to determine which portions of the proposal submitted by NEC Business Network Solutions, Inc. ("NEC") are subject to federal copyright law.

Pursuant to section 552.305 of the Government Code, the city notified LinkAmerica of the request for information and of its opportunity to submit arguments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter,

LinkAmerica has not submitted any comments to this office explaining how release of its information would implicate its proprietary interests. Therefore, LinkAmerica has provided us with no basis to conclude that it has a protected proprietary interest in its information. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, LinkAmerica's information must be released.

Next, we address your concerns regarding the copyrighted materials submitted by NEC. Although you state that the city is aware of its responsibilities regarding copyrighted materials, you ask this office for assistance in determining which portions of NEC's proposal are protected by copyright. However, this office is not in a position to determine which information NEC has protected by copyright. The city must confer with NEC to determine which pages are in fact copyrighted. Once this determination is made, the city must allow inspection of the copyrighted materials, but is not required to furnish copies of these records. Attorney General Opinion JM-672 (1987). If the requestor wishes to make copies of the copyrighted materials, he must do so unassisted by the city. In making copies, the requestor assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, LinkAmerica's proposal must be released in its entirety. NEC's proposal must be released in accordance with applicable copyright laws.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 203681

Enc. Submitted documents

c: Mr. Gregg Rowland
Vice President, Sales
PacketHop, Inc.
1301 Shoreway Drive
Belmont, California 94002
(w/o enclosures)

Mr. Andres Ruza
VP, CFO
LinkAmerica
3002 Century
Rowlett, Texas 75088
(w/o enclosures)

Mr. Glen Means
VP, CFO
NEC Business Network Solutions, Inc.
6555 N. State Highway 161
Irving, Texas 75039
(w/o enclosures)